

No. 10-16696

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

KRISTIN PERRY, et al.,
Plaintiffs-Appellees,

v.

ARNOLD SCHWARZENEGGER, et al.,
Defendants,

and

DENNIS HOLLINGSWORTH, et al.,
Defendant-Intervenors-Appellants,

Appeal from the United States District Court
for the Northern District of California, Civil Case No. 09-2292-VRW
Honorable Vaughn R. Walker

**BRIEF OF *AMICI CURIAE* AMERICAN
ANTHROPOLOGICAL ASSOCIATION, AMERICAN
PSYCHOANALYTIC ASSOCIATION, NATIONAL
ASSOCIATION OF SOCIAL WORKERS, NATIONAL
ASSOCIATION OF SOCIAL WORKERS, CALIFORNIA
CHAPTER, AMERICAN SOCIOLOGICAL ASSOCIATION,
AND AMERICAN ACADEMY OF PEDIATRICS,
CALIFORNIA, SUPPORTING PLAINTIFFS-APPELLEES AND
URGING AFFIRMANCE**

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Dated: October 25, 2010

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OTHER AUTHORITIES

American Psychiatric Association, *Position Statement: Support of Legal Recognition of Same-Sex Civil Marriage* (2005)11
 American Psychoanalytic Association, *Position Paper on Gay Marriage* (2008).....11, 26
 American Psychological Association, *Lesbian & Gay Parenting* 15 (2005).....24
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 American Psychological Association, *Policy Statement: Sexual Orientation & Marriage* (2004)12
 American Psychological Association, *Resolution on Opposing Discriminatory Legislation & Initiatives Aimed at Gay, Lesbian, and Bisexual Persons* (2007)11
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 ANNA SCHEYETT, *The Mark of Madness: Stigma, Serious Mental Illnesses, and Social Work*, 3 SOCIAL WORK IN MENTAL HEALTH 79 (2005).....9
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JOHN BOSWELL, SAME-SEX UNIONS IN PREMODERN EUROPE (1995).....25

Raymond W. Chan et al., *Psychosocial Adjustment Among Children Conceived via Donor Insemination by Lesbian and Heterosexual Mothers*, 69 CHILD DEVELOPMENT 443 (1998)23

Bertram Cohler & M. Freeman, *Psychoanalysis and the Developmental Narrative*, in THE COURSE OF LIFE (George Pollock & Stanley Greenspan eds., vol. 5 1993).....15

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JOHN DOLLARD, CASTE AND CLASS IN A SOUTHERN TOWN (3D ED. 1957).....8, 17

John F. Dovidio et al., *Stigma: Introduction and Overview*, in THE SOCIAL PSYCHOLOGY OF STIGMA (Heatherton et al. eds., 2000).....5, 17

JACK DRESCHER, PSYCHOANALYTIC THERAPY & THE GAY MAN (1998).....13

JUST THE FACTS COALITION, JUST THE FACTS ABOUT SEXUAL ORIENTATION AND YOUTH: A PRIMER FOR PRINCIPALS, EDUCATORS, AND SCHOOL PERSONNEL (2008)12

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Linda D. Garnets et al., *Violence and Victimization of Lesbians and Gay Men: Mental Health Consequences*, J. INTERPERSONAL VIOLENCE 366 (1990).....9, 13

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GILBERT HERDT, *THIRD SEX, THIRD GENDER: BEYOND SEXUAL DIMORPHISM IN CULTURE AND HISTORY* (1994)25

Gregory M. Herek, *The Context of Anti-Gay Violence: Notes on Cultural and Psychological Heterosexism*, J. INTERPERSONAL VIOLENCE 316 (1990)17

Gregory Herek et al., *Psychological Sequelae of Hate-Crime Victimization Among Lesbian, Gay, and Bisexual Adults*, J. CONSULTING AND CLINICAL PSYCHOLOGY 945 (1999)17

Gregory M. Herek, *Hate Crimes Against Lesbians and Gay Men*, AM. PSYCHOLOGIST 948 (1989).....17

Gregory M. Herek, *Legal Recognition of Same-Sex Relationships in the United States - A Social Science Perspective*, AM. PSYCHOLOGIST 607 (2006)passim

Gregory M. Herek, *The Psychology of Sexual Prejudice*, CURRENT DIRECTIONS IN PSYCHOLOGICAL SCIENCE 19 (Feb. 2000)18

Richard A. Isay, *The Development of Sexual Identity in Homosexual Men*, 41 PSYCHOANALYTIC STUDY OF THE CHILD 467 (1986)13

Richard A. Isay, *On the Analytic Therapy of Homosexual Men*, 40 PSYCHOANALYTIC STUDY OF THE CHILD 235 (1985)13

Heinz Kohut, *Forms and Transformations of Narcissism*, J. AM. PSYCHOANALYTIC ASSN. 243 (1966)14

Heinz Kohut, *The Psychoanalytic Treatment of Narcissistic Personality Disorders: Outline of a Systematic Approach*, PSYCHOANALYTIC STUDY OF THE CHILD 86 (1968)14

Nancy Levit, *A Different Kind of Sameness: Beyond Formal Equality and Antisubordination Strategies in Gay Legal Theory*, 61 OHIO ST. L.J. 867 (2000)18

B.J. Limandri, *Disclosure of Stigmatizing Conditions: The Discloser’s Perspective*, 3 ARCHIVES OF PSYCHIATRIC NURSING 69 (1989)8

Brenda Major & Laurie T. O’Brien, *The Social Psychology of Stigma*, ANN. REVIEW OF PSYCHOLOGY 393 (2005).....5

Ilan H. Meyer, *Prejudice, Social Stress, and Mental Health in Lesbian, Gay, and Bisexual Populations: Conceptual Issues and Research Evidence*, PSYCHOLOGICAL BULL. 674 (2003)passim

Richard Milich et al., *Effects of Stigmatizing Information on Children’s Peer Relations: Believing Is Seeing*, 21 SCHOOL PSYCHOLOGY REVIEW 400 (1992).....25, 26

PEGGY J. MILLER ET AL., *Narrative Practices and the Social Construction of Self in Childhood*, 17 AM. ETHNOLOGIST 292 (1990)..... 15

JAMES NEILL, THE ORIGINS AND ROLE OF SAME-SEX RELATIONS IN HUMAN SOCIETIES (2009).....25

R.M. Puhl & J.D. Latner, *Stigma, Obesity, and the Health of the Nation’s Children*, 133 PSYCHOLOGICAL BULL. 557 (2007)9

C.J. Patterson, *Lesbian and Gay Parents and Their Children: Summary of Research Findings*, in LESBIAN AND GAY PARENTING : A RESOURCE FOR PSYCHOLOGISTS (American Psychological Assn. 2004)24

James G. Pawelski et al., *The Effects of Marriage, Civil Union, and Domestic Partnership Laws on the Health and Well-Being of Children*, 118 PEDIATRICS (Official J. of the Am. Academy of Pediatrics) 349 (2006)23

E.C. Perrin & The Committee on the Psychological Aspects of Child and Family Health, *Technical Report: Coparent or Second-Parent Adoption by Same-Sex Parents*, 109 PEDIATRICS 341 (2002)).....24

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WILL ROSCOE, CHANGING ONES: THIRD AND FOURTH GENDERS IN NATIVE NORTH AMERICA (2000).....25

Kenneth H. Rubin et al., *Peer Interactions, Relationships, and Groups*, in HANDBOOK OF CHILD PSYCHOLOGY (William Damon ed., vol. 3, 5th ed. 1998)26

C.K. Sigelman et al., *Courtesy Stigma: The Social Implications of Associating with a Gay Person*, J. SOCIAL PSYCHOLOGY 45 (1991)9

DANIEL N. STERN, THE INTERPERSONAL WORLD OF THE INFANT: A VIEW FROM PSYCHOANALYSIS AND DEVELOPMENTAL PSYCHOLOGY (1985).....13

STIGMA AND GROUP INEQUALITY: SOCIAL PSYCHOLOGICAL PERSPECTIVES (Shana Levin & Collette van Laar eds., 2006)8

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STATEMENT OF INTEREST OF AMICI AND SOURCE OF AUTHORITY TO FILE

This brief is submitted by several organizations dedicated to the advancement of the social sciences and the promotion of mental health, including the American Anthropological Association, the American Psychoanalytic Association, the National Association of Social Workers, the National Association of Social Workers, California Chapter, the American Sociological Association, and the American Academy of Pediatrics, California.¹ They submit this brief to present to the Court the perspective of these sciences on certain issues raised in this case. These *amici*, all of whom are independent of the parties to this action, have extensive experience with the subjects addressed in their *amicus curiae* brief – namely, the psychological and social ramifications of discrimination.

INTRODUCTION AND SUMMARY OF ARGUMENT

The evidence presented at trial before the District Court demonstrated that the State of California, having amended its Constitution to strip the right of same-sex couples to marry, is in violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution. This

¹ This brief is filed with the consent of the parties to this appeal. *See* Fed. R. App. P. 29(a). More detail concerning each of the *amici* is set out in the accompanying Appendix of Statements of Interest of *Amici Curiae* American Anthropological Association, American Psychoanalytic Association, National Association of Social Workers, National Association of Social Workers, California Chapter, American Sociological Association, and American Academy of Pediatrics, California.

amendment, passed via Proposition 8 in November 2008, places the State's imprimatur on the relegation of gay men and women to an inferior legal status.² Such institutionalized discrimination stigmatizes these individuals and their relationships as inherently inferior.

In correctly ruling that Proposition 8 is unconstitutional, the District Court cited abundant record evidence concerning the stigmatization effects of institutionalized discrimination – and the resulting impacts of that stigma on the mental health and social standing of gay men and women and their families. On the basis of this evidence, the District Court determined that “Proposition 8 places the force of law behind stigmas against gays and lesbians, including [that] gays and lesbians do not have intimate relationships similar to heterosexual couples; gays and lesbians are not as good as heterosexuals; and gay and lesbian relationships do not deserve the full recognition of society.” Order at 85.

The record evidence upon which the District Court based its ruling finds plentiful support in a wide array of social science research and analysis. As organizations dedicated to the advancement of the social sciences and the promotion of mental health, *amici* file this brief to assist the Court in placing the record evidence in its appropriate scientific context. In so doing, *amici* confirm

² Proposition 8 added Article I, § 7.5 to the California Constitution. That provision states that “[o]nly marriage between a man and a woman is valid or recognized in California.”

that the District Court’s ruling was properly based on scientific conclusions drawn from decades of rigorous empirical research in each of their respective disciplines.

ARGUMENT

In *Brown v. Board of Education*, 347 U.S. 483, 493 (1954), the Supreme Court found that separating individuals from others solely because of their minority status “generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone.” On the basis of this finding, the Court held that “[s]eparate educational facilities” for racial minorities “are inherently unequal.” 347 U.S. at 495.

Through its enactment of Proposition 8, the State of California has singled out gay men and women and has prevented them alone from participating in the institution of marriage. By separating this group, solely on the basis of their minority status, the State has done precisely what the Supreme Court condemned in *Brown*. The resultant stigmatizing impact on gay men and women is profound, because “it has the sanction of law” and because the State’s policy is “interpreted as denoting the inferiority” of members of the gay community. *Id.* at 494; *see also Heckler v. Mathews*, 465 U.S. 728, 739-40 (1984) (stigmatization “can cause serious non-economic injuries to those persons who are personally denied equal treatment solely because of their membership in a disfavored group” because it

denotes them as “inherently inferior” and as “less worthy participants in the political process”).

Throughout history, state interference with the ability to marry has been a means of oppression and stigmatization of disfavored groups, serving to degrade whole classes of people by depriving them of the full ability to exercise a fundamental right. *See, e.g., Loving v. Virginia*, 388 U.S. 1 (1967). Just as the anti-miscegenation laws of the past century established state-sponsored stigmatization on the basis of race, Proposition 8 does the same on the basis of sexual orientation.

Research demonstrates that the impact on same-sex couples of the degraded status to which the law relegates their relationships has exactly such adverse stigmatizing effects. Moreover, the substantial social and psychological effects of this stigmatization are borne not only by same-sex couples and individuals, but by their children as well.

I. The Stigma Created by the State’s Differential Treatment of Gay Men and Women Has Severe Psychological and Social Impacts.

The concept of “stigma” refers to the phenomenon through which an individual with an attribute that is discredited by his or her society is devalued in

society as a result of that attribute.³ The concept has been the subject of numerous empirical studies and has achieved nearly universal acceptance by social scientists.⁴ In modern usage, “stigmatization” refers to an invisible sign of disapproval that permits “insiders” to draw lines around “outsiders.” This demarcation permits “insiders” to know who is “in” and who is “out” and allows the group to maintain its solidarity by punishing those who deviate from accepted norms of conduct.⁵

Stigma is not inherent in any particular attribute; rather, it is the product of a collective social decision directed at individuals who possess an attribute. It has therefore been characterized as an “undesired differentness.”⁶ Because stigma is a social construct, attributes subject to stigmatization will change over time and will evolve along with social norms and mores.

Homosexuality in particular generates a type of stigma that remains deeply

³ Trial Tr. at 818-19 (Meyer); *see also* ERVING GOFFMAN, STIGMA: NOTES ON THE MANAGEMENT OF SPOILED IDENTITY 2-3 (1963).

⁴ *See, e.g.*, John F. Dovidio et al., *Stigma: Introduction and Overview*, in THE SOCIAL PSYCHOLOGY OF STIGMA 1-28 (Heatherton et al. eds., 2000); Brenda Major & Laurie T. O’Brien, *The Social Psychology of Stigma*, 56 ANN. REVIEW PSYCHOLOGY 393, 394-412 (2005).

⁵ GERHARD FALK, STIGMA: HOW WE TREAT OUTSIDERS 17-33, 339-40 (2001); *see also* Janet A. Funderburk et al., *Does Attitude Toward Epilepsy Mediate the Relationship Between Perceived Stigma and Mental Health Outcomes in Children with Epilepsy?*, 11 EPILEPSY AND BEHAVIOR 71, 71-72 (2007) (“stigma exists when elements of labeling, stereotyping, separation, status loss, and discrimination occur together in a power situation that allows them to unfold” [citation]).

⁶ Trial Tr. at 2058 (Herek); Goffman, *supra*, at 5.

embedded in American society today. Indeed, studies have shown that a significant percentage of the American public continues to harbor negative feelings and hostility toward gay men and lesbians.⁷ As Professor Gary Segura testified, “[t]here is simply no other person in society who endures the likelihood of being harmed as a consequence of their identity [more] than a gay man or lesbian.” Trial Tr. at 1571. The current reality of the prejudice directed toward gay men and women was captured in the trial testimony of Defendant-Intervenor Hak-Shing William Tam, who affirmed his belief that “homosexuals are twelve times more likely to molest children” than heterosexuals (Trial Tr. at 1921) – a proposition that is entirely without scientific or other empirical support.⁸

Stigma can be created and reinforced when the law imposes structural barriers on the ability of disfavored groups to gain access to society’s resources.⁹ As Professor Gregory Herek testified, “stigma is manifested in the institutions of society,” such as when “the law . . . designate[s] certain groups as lacking certain

⁷ Trial Tr. at 1563-64 (Segura); *see also* Field Research Corporation, *California Opinion Index, A Digest on How the Public Views Gay and Lesbian Rights Issues*, available at <http://field.com/fieldpollonline/subscribers/COI-06-Mar-Gay-Rights.pdf>.

⁸ Similarly, Defendants’ expert Professor Kenneth Miller conceded on cross-examination that in society “there’s a view that homosexuals may certainly undermine traditional families.” Trial Tr. at 2606. This proposition also lacks any empirical basis.

⁹ Trial Tr. at 819 (Meyer).

resources relative to others.” Trial Tr. at 2051.¹⁰ The State-sanctioned demarcation between gay and straight relationships embodied in Proposition 8 creates precisely this kind of stigmatization. Proposition 8 restricts the ability of one group of individuals to participate in an institution that is loaded with social meaning and in which many members of society aspire to participate. *See* Trial Tr. at 827 (Meyer).

As Professor Herek has previously stated in summarizing his independent research on this issue:

Denying same-sex couples the label of marriage – even if they receive all other rights and privileges conferred by marriage – arguably devalues and delegitimizes these relationships. It conveys a societal judgment that committed intimate relationships with people of the same sex are inferior to heterosexual relationships and that the participants in a same-sex relationship are less deserving of society’s recognition than are heterosexual couples. It perpetuates power differentials whereby heterosexuals have greater access than nonheterosexuals to the many resources and benefits bestowed by the institution of marriage. These elements are the crux of stigma. Such stigma affects all homosexual and bisexual persons, not

¹⁰ Professor Ilan Meyer also testified about “structural stigmas,” which “determine the access that people have to [society’s] institutions.” Trial Tr. at 820. Proposition 8 is an example of a “structural stigma,” because it operates as “a block or a gate toward [the institution of marriage].” Trial Tr. at 826. Accordingly, “Proposition 8, in fact, says that if you are gay or lesbian, you cannot achieve this particular goal.” *Id.*

only the members of same-sex couples who seek to be married.¹¹

An extensive amount of psychiatric, psychological, psychoanalytic, and sociological research literature has demonstrated the severe adverse psychological and social effects of stigma.¹² This issue was addressed at trial in the testimony of Professor Meyer concerning the relationship between stigma and what is known as “minority stress.”¹³

For example, experiences that highlight the otherness of a stigmatized individual impart an added and adverse social meaning to that individual relative to non-stigmatized individuals.¹⁴ That is, if they call to the fore the attribute that is the source of the stigmatization, even ostensibly minor events – such as filling out a form that requests marital status information – can be evocative of past and

¹¹ Gregory M. Herek, *Legal Recognition of Same-Sex Relationships in the United States - A Social Science Perspective*, 61 AM. PSYCHOLOGIST 607, 617 (2006).

¹² See, e.g., STIGMA AND GROUP INEQUALITY: SOCIAL PSYCHOLOGICAL PERSPECTIVES (Shana Levin & Collette van Laar eds., 2006) (exploring many different effects of stigma); JOHN DOLLARD, CASTE AND CLASS IN A SOUTHERN TOWN 61-96 & generally (3d ed. 1957) (African Americans); B.J. Limandri, *Disclosure of Stigmatizing Conditions: The Discloser's Perspective*, 3 ARCHIVES OF PSYCHIATRIC NURSING 69, 69-74 (1989) (survivors of domestic violence and individuals with HIV or AIDS).

¹³ Trial Tr. at 828-34, 870-72, 892-93, 975-83 (Meyer). Professor Meyer testified that the term “minority stress” identifies stress that stems from social arrangements such as “prejudice, stigma, and discrimination.” *Id.* at 832. There is a strong relationship between minority stress and adverse mental health outcomes in gay and lesbian populations. *Id.* at 870-72, 898-99.

¹⁴ Trial Tr. at 838-42 (Meyer).

present feelings of social disapproval, rejection, and disrespect.¹⁵ Thus, otherwise insignificant events take on outsized mental health consequences because they reinforce the larger stigmatization suffered by gay men and women.

Research confirms that this type of stigma can significantly lower the self-esteem of stigmatized individuals, leading to social withdrawal, decreased expectation for oneself, avoidance of attempts at high achievement, and angry resentment.¹⁶ Stigmatized individuals are known to suffer from expectations of rejection and discrimination, harboring a stressful sense of anticipation that their disapproved-of attribute will trigger an adverse reaction in others.¹⁷

In the context of same-gender sexual orientation, the deep and pervasive impacts of stigma are well documented.¹⁸ The best data available

¹⁵ Trial Tr. at 842-43 (Meyer); 175 (Stier).

¹⁶ See Anna Scheyett, *The Mark of Madness: Stigma, Serious Mental Illnesses, and Social Work*, 3 SOCIAL WORK IN MENTAL HEALTH 79, 80, 84, 88 (2005) (society's "negative valuation" of the stigmatized individual "is integrated into the individual's sense of self-worth and identity, and result[s] in an inability to exert power or believe in one's ability to participate in society"); Limandri, *supra*, at 69-74 (stigmatized individuals experience shame). The negative impacts of stigma are extended, not just to the individuals who have the stigmatized characteristic, but also to those who are associated with them. C.K. Sigelman et al., *Courtesy Stigma: The Social Implications of Associating with a Gay Person*, 131 J. SOCIAL PSYCHOLOGY 45, 45-55 (1991); R.M. Puhl & J.D. Latner, *Stigma, Obesity, and the Health of the Nation's Children*, 133 PSYCHOLOGICAL BULL. 557, 567 (2007) (citing study).

¹⁷ Trial Tr. at 409-10 (Chauncey); 851-53, SER at 153-55 (Meyer); 1218-19 (Zia).

¹⁸ See, e.g., Ilan H. Meyer, *Prejudice, Social Stress, and Mental Health in Lesbian, Gay, and Bisexual Populations: Conceptual Issues and Research Evidence*, 129 PSYCHOLOGICAL BULL. 674, 674-85 (2003); Linda D. Garnets et al., (continued...)

demonstrate substantially increased psychological distress among gay men and women.¹⁹ In addition to the stigmatization-related stressors described above, gay men and women experience elevated psychological distress because they are often forced to actively conceal their sexual identity.²⁰ This is stressful both because it takes active effort to engage in concealing behavior and because the very process of concealment may prevent such individuals from obtaining the positive benefits of, for example, social support services targeted toward gay populations.

Based in part on the sound and comprehensive empirical research that has been conducted on the adverse effects of stigmatization, numerous prominent social sciences organizations, including several *amici*, have issued position statements supporting same-sex marriage and opposing discrimination on the basis of sexual orientation.²¹

For example, the American Psychoanalytic Association's official position is that discrimination against gay men and women "is having a significant adverse impact on the psychological and social well-being and stability of gay and

Violence and Victimization of Lesbians and Gay Men: Mental Health Consequences, 5 J. INTERPERSONAL VIOLENCE 366, 369-70 (1990).

¹⁹ Meyer, *Prejudice*, *supra*, at 683-85.

²⁰ Trial Tr. at 854-60 (Meyer).

²¹ At trial, defense witness David Blankenhorn attempted to characterize these position statements as mere "policy statements." Trial Tr. at 2921. Although these statements do reflect the policies of the organizations that made them, they are grounded in extensive empirical research.

lesbian couples, their children and families.”²² This position was supported by an empirically based “Review of Research Relevant to Same-Sex Marriage,” which concluded that “[d]iscrimination’s detrimental impact on mental health has . . . been well documented in lesbian and gay populations. ‘Minority stress’ contributes to psychiatric problems and gay and lesbians who report greater levels of stigma and discrimination are more likely to seek psychological treatment.”²³

The American Psychological Association has also issued numerous evidence-based position statements relevant to gay and lesbian mental health issues.²⁴ Its official position holds that “the evidence clearly supports the position

²² American Psychoanalytic Association, *Position Paper on Gay Marriage* (2008), available at http://www.apsa.org/About_APsaA/Position_Statements/Gay_Marriage.aspx (citing over twenty references); See also, e.g., American Psychiatric Association, *Position Statement: Support of Legal Recognition of Same-Sex Civil Marriage* (2005), available at <http://www.psych.org/Departments/EDU/Library/APAOfficialDocumentsandRelated/PositionStatements/200502.aspx> (“Same-sex couples therefore experience several kinds of state-sanctioned discrimination that can adversely affect the stability of their relationships and their mental health”).

²³ American Psychoanalytic Association, *supra* note 22 (citing Joanne DiPlacido, *Minority Stress Among Lesbians, Gay Men, and Bisexuals: A Consequence of Heterosexism, Homophobia, and Stigmatization*, in *STIGMA AND SEXUAL ORIENTATION: UNDERSTANDING PREJUDICE AGAINST LESBIANS, GAY MEN, AND BISEXUALS* 138-59 (Gregory M Herek ed., 1998); Meyer, *Prejudice*, *supra*, at 674-97).

²⁴ See, e.g., American Psychological Association, *Resolution on Opposing Discriminatory Legislation & Initiatives Aimed at Gay, Lesbian, and Bisexual Persons* (2007), available at <http://www.apa.org/about/governance/council/policy/discriminatory-legislation.aspx> (“legislation and initiative actions [aimed at gay populations] can also result in psychological distress for lesbians, gay men, and bisexual people. Immediate consequences include fear, sadness, alienation, anger, and an increased (continued...)”).

that the social stigma, prejudice, discrimination, and violence associated with not having a heterosexual sexual orientation and the hostile and stressful social environments created thereby adversely affect the psychological, physical, social and economic well-being of lesbian, gay, and bisexual individuals.”²⁵

The heightened levels of psychological distress demonstrated by these comprehensive research findings are especially evident during adolescence.²⁶ This concept was addressed at trial by Plaintiff Jeffrey Zarrillo, who testified about “how he felt growing up in society with the stereotypes and hate that existed.” Trial Tr. at 78-79. Mr. Zarrillo testified that he felt heightened stress as a teenager, resulting from feeling distanced from his heterosexual friends in matters such as dating and sports and from observing the rejection of gay youth in popular culture.

Id. One of the consequences of experiences such as these is that gay adolescents

in internalized homophobia. In addition, these actions can increase the degree to which lesbians, gay men, and bisexuals are affected by minority stress”).

²⁵ American Psychological Association, *Policy Statement: Sexual Orientation & Marriage* (2004), available at <http://www.apa.org/about/governance/council/policy/marriage.aspx> (citing over forty references, including BADGETT, MONEY, MYTHS, AND CHANGE, *infra* note 31; S.D. Cochran, J.G. Sullivan, & V.M. Mays, *Prevalence of Mental Disorders, Psychological Distress, and Mental Health Service Use Among Lesbian, Gay, and Bisexual Adults in the United States*, 71 J. CONSULTING & CLINICAL PSYCHOLOGY 53-61 (2003); G.M. Herek, J.R. Gillis, & J.C. Cogan, *Psychological Sequelae of Hate Crime Victimization Among Lesbian, Gay, and Bisexual Adults*, 67 J. OF CONSULTING AND CLINICAL PSYCHOLOGY 945-51 (1999); Meyer, *Prejudice*, *supra*, at 674-97).

²⁶ See, e.g., Trial Exhibit No. PX2338 (JUST THE FACTS COALITION, JUST THE FACTS ABOUT SEXUAL ORIENTATION AND YOUTH: A PRIMER FOR PRINCIPALS, EDUCATORS, AND SCHOOL PERSONNEL (2008)).

have, among other things, a materially greater suicide attempt rate than their peers. This results from the pain of being stigmatized and, ironically, the self-hatred associated with internalizing the social values that led to the stigmatization in the first place.²⁷ By perpetuating the stigma through its segregation of gay couples into a separate form of legal relationship, the State contributes materially to these harmful, and sometimes tragic, outcomes.

In addition to affirmatively stigmatizing them, the State's refusal to permit gay men and women to marry persons of their choice deprives them of a critical source of affirmation of their lives. Beginning in earliest infancy and continuing throughout one's entire life, the experience of being affirmed by external sources of power and respect promotes psychological well being.²⁸ The

²⁷ Trial Tr. at 865, 872, 877 (Meyer); *see also* Meyer, *Prejudice, supra*, at 684-85; Richard A. Isay, *On the Analytic Therapy of Homosexual Men*, 40 PSYCHOANALYTIC STUDY OF THE CHILD 235, 250-52 (1985); Richard A. Isay, *The Development of Sexual Identity in Homosexual Men*, 41 PSYCHOANALYTIC STUDY OF THE CHILD 467, 474, 487 (1986); Jack Drescher, *Psychoanalytic Therapy & the Gay Man* 257-91 (1998); Garnets, *supra*, at 369-70.

²⁸ DANIEL N. STERN, *THE INTERPERSONAL WORLD OF THE INFANT: A VIEW FROM PSYCHOANALYSIS AND DEVELOPMENTAL PSYCHOLOGY* 72-76, 101-11, 138-61 (1985); ROBERT M. GALATZER-LEVY & BERTRAM J. COHLER, *THE ESSENTIAL OTHER: A DEVELOPMENTAL PSYCHOLOGY OF THE SELF* 61-63, 136-37, 189-95 (1993); THOMAS J. COTTLE, *A SENSE OF SELF: THE WORK OF AFFIRMATION* 166 & generally (2003); Anna Ornstein, *A Developmental Perspective on the Sense of Power, Self-Esteem, and Destructive Aggression*, 25 ANN. PSYCHOANALYSIS 145, 150 (1997).

absence of such affirmation is associated with emotional pain and may lead to significant psychological difficulties.²⁹

At trial, numerous witnesses testified to their personal experiences with the absence of affirmation for themselves and their relationships. Plaintiff Kristin Perry stated that the State's disapproval of same-sex marriage confirmed her sense that "when you're gay, you think you don't really deserve things." Trial Tr. at 146. Similarly, Plaintiff Jeffrey Zarrillo testified that California's actions have "relegate[d him] to a level of second class citizenship." Trial Tr. at 82, SER at 93. The de facto consequence of the State's failure to give gay men and women the same positive affirmation it affords to heterosexuals is that such individuals are left with a harmful sense of unworthiness vis-à-vis other members of society. In effect, the withholding of affirmation itself reinforces the overall stigmatization imposed upon and felt by members of the gay population.

The impact of this deprivation is, again, particularly acute for younger people. Like all children, youngsters who have a gay or lesbian predisposition

²⁹ Heinz Kohut, *Forms and Transformations of Narcissism*, 14 J. AM. PSYCHOANALYTIC ASSN. 243, 245-48 (1966); Heinz Kohut, *The Psychoanalytic Treatment of Narcissistic Personality Disorders: Outline of a Systematic Approach*, 23 PSYCHOANALYTIC STUDY OF THE CHILD 86, 88-89 (1968); Ornstein, *supra*, at 150. Affirmation has been shown to buffer the effects of negative attitudes toward oneself that may stem from a homosexual orientation. Vincent F. Bonfitto, *The Formation of Gay and Lesbian Identity and Community in the Connecticut River Valley of Western Massachusetts, 1900-1970*, 33 J. HOMOSEX. 69, 88-93 (1997).

spend considerable time imagining what their lives will be like when they “grow up.” These psychologically important ideas include images of the stable romantic relationships and families they will create as adults. Such ideas are important to the mental health of children, because they help establish a positive personal identity and serve to motivate socially adaptive behaviors (such as doing well at school) and to facilitate turning these dreams into realities.³⁰ As Professor Meyer testified at trial, “[g]ay and lesbian youth ha[ve] a harder time projecting to the future because they have learned [the] kind of negative attitudes” associated with internalized homophobia. Trial Tr. at 868.

These children, like their heterosexually oriented peers, dream of marriage (and are encouraged by society to do so) but under the current legal regime they cannot see concrete models of how this dream can be actualized. The unavailability of marriage consistent with their sexual orientation thus enhances the psychological burden borne by gay youth. During the trial, this general proposition was given personal meaning by Plaintiff Kristin Perry. When asked why the institution of marriage was important to her, Ms. Perry replied, “I have

³⁰ Janet W. Astington, *Narrative and the Child's Theory of Mind*, in NARRATIVE THOUGHT AND NARRATIVE LANGUAGE 151-71 (Bruce Britton & Anthony Pellegrini eds., 1990); Bertram Cohler & M. Freeman, *Psychoanalysis and the Developmental Narrative*, in THE COURSE OF LIFE 126-27, 146, 153-56 (George Pollock & Stanley Greenspan eds., vol. 5 1993); PEGGY J. MILLER ET AL., *Narrative Practices and the Social Construction of Self in Childhood*, 17 AM. ETHNOLOGIST 292, 304-06 (1990); PAUL RICOEUR, HERMENEUTICS & THE HUMAN SCIENCES 274-96 (John Thompson ed., 2006).

never really let myself want it until now. Growing up as a lesbian, you don't let yourself want it, because everyone tells you you are never going to have it." Trial Tr. at 142.

Overall, the severe social and psychological consequences of the stigma placed upon gay men and women by society were emphasized time and again throughout the trial by the testimony of individuals who experienced those effects. These witnesses used words and phrases such as: "ashamed;" "relegated to a corner;" "demoniz[ed];" "fear;" "community . . . threat;" "second class citizen;" "not good enough;" "mocked and made fun of and disparaged;" "outraged and hurt . . . and humiliated;" object of "pity;" lack "of inclusion;" and "invalidated . . . as human beings." Trial Tr. at 82, SER at 93; 94; 100; 114; 147; 150; 168; 175; 1232. These are verbal embodiments of the stigma placed on gay men and women in our society – a stigma that is reinforced and enhanced when the government itself discriminates against them.

Through the constitutional embodiment of discrimination established by Proposition 8, the State of California has sent a message to members of the gay community that they must continue to wear a State-sponsored badge of dishonor. As a result, members of this population will remain stigmatized and will continue to endure the psychological and social burdens of that stigmatization.

II. Singling Out Gay Men and Women as Ineligible for the Institution of Marriage Invites the Public to Discriminate Against Them.

Decades of research have confirmed that stigmatized people are ostracized, devalued, rejected, scorned, and shunned, experiencing discrimination, insults, attacks, and even murder.³¹ This is particularly true for gay men and women, a stigmatized group that has suffered a well-documented history of ostracization, discrimination, and violence.³²

By establishing and perpetuating a regime in which separate treatment of same-sex couples is not only condoned, but enshrined as a matter of California constitutional law, the government encourages disparate treatment of gay men and women by the broader society and fosters a climate in which such treatment thrives.³³ As San Diego Mayor Jerry Sanders testified, “if government tolerates

³¹ See, e.g., Dovidio, *supra*, at 1-24; Falk, *supra*, at 17-35; Dollard, *supra*, at 61-96; see also Scheyett, *supra*, at 87 (citing studies demonstrating links between stigma and discrimination in housing, the workplace, and the criminal justice system); M.V. LEE BADGETT, MONEY, MYTHS, AND CHANGE: THE ECONOMIC LIVES OF LESBIANS AND GAY MEN 9 (2001) (describing economic impact of being seen as member of disfavored group); Gregory Herek et al., *Psychological Sequelae of Hate-Crime Victimization Among Lesbian, Gay, and Bisexual Adults*, 67 J. CONSULTING AND CLINICAL PSYCHOLOGY 945, 947-48 (1999).

³² Trial Tr. at 361, SER at 130 (Chauncey); see also Meyer, *Prejudice*, *supra*, at 680; Herek, *Legal Recognition*, *supra*, at 617; Kevin T. Berrill & Gregory M. Herek, *Primary and Secondary Victimization in Anti-Gay Hate Crimes*, 5 J. INTERPERSONAL VIOLENCE 401, 410 (1990); Gregory M. Herek, *The Context of Anti-Gay Violence: Notes on Cultural and Psychological Heterosexism*, 5 J. INTERPERSONAL VIOLENCE 316, 323-26 (1990).

³³ See Gregory M. Herek, *Hate Crimes Against Lesbians and Gay Men*, 44 AM. PSYCHOLOGIST 948, 949 (1989) (describing antigay hate crimes as a “logical outgrowth” of a climate of government intolerance, which “fosters” violent (continued...))

discrimination against anyone for any reason, it becomes an excuse for the public to do exactly the same thing.” Trial Tr. at 1276. The District Court concurred, finding that “Proposition 8 singles out gays and lesbians and legitimates their unequal treatment [and] perpetuates” stereotypes against them. Order at 93.

The reason that government action affects private behavior is clear: “laws send cultural messages; they *give permission*.”³⁴ As noted by Professor Herek, when they operate as “structural stigma,” laws “identif[y] which members of society are devalued [and give] a level of permission to attack or denigrate particular groups.” Trial Tr. at 2053. The result is that the State is a “major factor in creating [the] social environment that [is] prejudicial or stigmatizing.” Trial Tr. at 880 (Meyer).

It follows that when California separates same-sex couples, it gives the public permission to view gay men and women as separate and different, fueling prejudice and discrimination against them. *See Lawrence v. Texas* 539 U.S. 558, 575 (2003) (“When homosexual conduct is made criminal by the law of

behavior); Meyer, *Prejudice, supra*, at 680 (stating that abuses against gay men and women are “sanctioned by governments and societies through formal mechanisms such as discriminatory laws and informal mechanisms, including prejudice”); Gregory M. Herek, *The Psychology of Sexual Prejudice*, 9 CURRENT DIRECTIONS IN PSYCHOLOGICAL SCIENCE 19, 21 (Feb. 2000).

³⁴ Nancy Levit, *A Different Kind of Sameness: Beyond Formal Equality and Antisubordination Strategies in Gay Legal Theory*, 61 OHIO ST. L.J. 867, 879 (2000) (emphasis in original); *see also* Limandri, *supra*, at 70 (“Societal messages that some behaviors or conditions are taboo become[] manifested in discrimination”).

the State, that declaration in and of itself is an invitation to subject homosexual persons to discrimination both in the public and in the private spheres.”). As Professor George Chauncey testified at trial, the “most significant” aspect of the long history of anti-gay actions on the part of governments is that such actions have given “the imprimatur of . . . government officials to . . . images of stereotypes of homosexuals.” Trial Tr. at 405.

By giving same-sex committed relationships a different legal status, segregated from that enjoyed by opposite-sex relationships, the State conveys a message that relationships with people of the same sex are different and, implicitly, inferior.³⁵ The public listens to this message and understands that gay men and women are not, in the eyes of the government, worthy of equal participation in all of society’s institutions.³⁶ Professor Meyer touched on this issue when he testified that, in addition to sending the message that “gay relationships . . . are of secondary

³⁵ See Herek, *Legal Recognition*, *supra*, at 617.

³⁶ Conversely, as Defendants’ expert David Blankenhorn admitted at trial, placing same-sex relationships on equal legal footing with heterosexual relationships would undermine this broad sense that gay men and women are unequal. Mr. Blankenhorn agreed that “[s]ame-sex marriage would signify greater social acceptance of homosexual love and the worth and validity of same-sex intimate relationships.” Trial Tr. at 2850. Moreover, Mr. Blankenhorn agreed that “[g]ay marriage might contribute over time to a decline in anti-gay prejudice. . . .” Trial Tr. at 2851. Mr. Blankenhorn also conceded his belief that “today the principle of equal human dignity must apply to gay and lesbian persons. In that sense, insofar as we are a nation founded on this principle, we would be *more* American on the day we permitted same-sex marriage than we were on the day before.” Trial Exhibit No. DIX0956 (DAVID BLANKENHORN, *THE FUTURE OF MARRIAGE* (2007) (emphasis in original)); *see also* Trial Tr. at 2805 (Blankenhorn).

value,” Proposition 8 “sends a strong message about the values of the State,” which “would . . . encourage or at least is consistent with holding prejudicial attitudes.”

Trial Tr. at 854, SER at 156. In other words, Proposition 8 sends a State-sponsored “message” that “it is okay to reject” gay individuals and same-sex relationships.

Trial Tr. at 863 (Meyer). The resulting stigma attaches, not only to same-sex couples who seek to be married, but to all gay men and women, regardless of their relationship status or desire to marry.³⁷

The long history of official government harassment and discrimination directed at gay men and women – and of the parallel discrimination inflicted by private parties – was discussed at length at trial and in other briefs to this Court and need not be repeated here.³⁸ Significantly, the link between the State’s policy of segregation of gay couples and discriminatory private conduct continues today, even though in virtually every context other than the one at issue here, California law condemns discrimination against gay men and women.³⁹ Yet,

³⁷ Herek, *Legal Recognition*, *supra*, at 617.

³⁸ *See, e.g.*, Trial Testimony of Prof. George Chauncey, Trial Tr. at 357-442.

³⁹ *See, e.g.*, Cal. Civ. Code, § 51 (equal accommodation in business establishments); *id.*, § 51.7 (violence based on sexual orientation); Cal. Code Civ. Proc., § 204 (jury service); Cal. Ed. Code, § 220 (State-funded educational institutions); *id.*, § 32228 (hate violence in schools); Cal. Gov. Code, § 11135 (State-funded programs); *id.*, §§ 12921, 12940 (employment); *id.*, §§ 12921, 12955 (housing); Cal. Health & Saf. Code, § 1365.5 (contract availability or terms); *id.*, § 1586.7 (adult day care centers); Cal. Ins. Code, § 10140 (life and disability insurance); Cal. Lab. Code, § 1735 (contractors); *id.*, § 4600.6 (workers’ compensation); Cal. Pen. Code, §§ 422.55, 422.6 (hate crimes); Cal. Welf. & Inst. (continued...)

by treating gay men and women differently in the area of marriage – an area both sides in this case agree to be of tremendous significance – the State continues to perpetuate and compound the historical stigma against them, sending the public the message that at least some discrimination is still acceptable. Such a mixed message inherently undercuts the antidiscrimination policy that the State of California otherwise actively pursues.

Moreover, the State’s failure to permit same-sex couples to marry provides a structure that affirmatively enables private discrimination against same-sex couples. In some instances, the fact that same-sex couples are not married can give “cover” to private parties who discriminate on the basis of sexual orientation.⁴⁰

Proposition 8 thus stands as the latest example in a long history of government-sponsored discrimination against gay men and women. This discriminatory policy, now embodied in the very Constitution of the State of California, fosters and encourages a continued public sentiment that gay

Code, § 9103.1 (services provided under Older Americans Act); *id.*, § 16001.9 (foster children’s access to services).

⁴⁰ One arguable example of this is *North Coast Women’s Care Medical Group v. Superior Court*, 137 Cal. App. 4th 781 (2006), in which two doctors refused to perform an artificial insemination procedure for a woman in a domestic partnership, claiming as their reason, not the fact that she is a lesbian, but rather that she is not married. Regardless of whether or not this explanation was a pretext for discrimination based on her sexual orientation, permitting the couple to marry would have removed the doctors’ ability to offer it.

individuals and same-sex relationships are of inherently lesser value than society's heterosexual majority and opposite-sex relationships.

III. Depriving Same-Sex Couples of the Ability to Marry Has Adverse Effects on Their Children.

The State's refusal to permit same-sex couples to marry does not merely affect the couples themselves; it also affects their children. This was a core opinion offered by Professor Michael Lamb in trial, where he stated that the "adjustment of [children of same-sex couples] would be promoted were their parents able to get married." Trial Tr. at 1010. Indeed, this opinion was readily confirmed by Defendants' proffered expert, David Blankenhorn, who expressed his belief that "it is almost certainly true that gay and lesbian couples and their children would benefit by having gay marriage." Trial Tr. at 2839, SER at 291.

One reason for this conclusion is that parental marriage "allows . . . children to benefit from some of the advantages that accrue to marriage, including the fact that [it is] a recognized social institution." Trial Tr. at 1042-43, SER at 180-81 (Lamb). This view is confirmed by a recent study funded by the American Academy of Pediatrics, which concluded that, in families headed by same-sex parents, "[c]ivil marriage can help foster financial and legal security, psychosocial stability, and an augmented sense of societal acceptance and support. . . . Children who are raised by civilly married parents benefit from the legal status granted to

their parents.”⁴¹ Thus, children raised by same-sex couples would benefit from the greater stability and security that would characterize their parents’ relationship if that relationship were recognized as a marriage.⁴²

The positive benefits children accrue from being raised by civilly married parents are independent of those parents’ sexual orientation. In the consensus view of the field of developmental psychology of children, the traits of an effective parent do not depend on the gender of that parent.⁴³ This is because the factors that most affect child development – the quality of the relationship between the parent and child, the quality of the relationship between the individuals raising the child, and the circumstances in which the child is raised – have nothing to do with parental gender or sexual orientation.⁴⁴

These *amici* and others have issued statements, based on sound empirical data, which are consistent with Professor Lamb’s testimony on these

⁴¹ James G. Pawelski et al., *The Effects of Marriage, Civil Union, and Domestic Partnership Laws on the Health and Well-Being of Children*, 118 PEDIATRICS 349, 361 (2006).

⁴² Herek, *Legal Recognition, supra*, at 616; Raymond W. Chan et al., *Psychosocial Adjustment Among Children Conceived via Donor Insemination by Lesbian and Heterosexual Mothers*, 69 CHILD DEVELOPMENT 443, 455 (1998).

⁴³ Trial Tr. at 1014-15, SER at 165-66 (Lamb).

⁴⁴ Order at 94-95 (finding that “[c]hildren raised by gay or lesbian parents are as likely as children raised by heterosexual parents to be healthy, successful and well-adjusted. The research supporting this conclusion is accepted beyond serious debate in the field of developmental psychology”); Trial Tr. at 1010-11; 1014-15, SER at 165-66; 1025, SER at 176 (Lamb).

issues. According to the official position of the American Psychoanalytic Association, the “[a]ccumulated evidence suggests the best interest of the child requires attachment to committed, nurturing and competent parents. Evaluation of an individual or couple for these parental qualities should be determined without prejudice regarding sexual orientation.”⁴⁵ In a similar vein, the American Psychological Association has concluded that “beliefs that lesbian and gay adults are not fit parents have no empirical foundation.”⁴⁶ Indeed,

[n]ot a single study has found children of lesbian or gay parents to be disadvantaged in any significant respect relative to children of heterosexual parents. Indeed, the evidence to date suggests that home environments provided by lesbian and gay parents are as likely as those provided by heterosexual parents to support and enable children’s psychosocial growth.⁴⁷

⁴⁵ Trial Exhibit No. PX0767 (2002 Position Statement of the American Psychoanalytic Association).

⁴⁶ American Psychological Association, *Position Statement: Sexual Orientation, Parents, & Children* (2004), available at <http://www.apa.org/about/governance/council/policy/parenting.aspx> (citing C.J. Patterson, *Family Relationships of Lesbians and Gay Men*, 62 JOURNAL OF MARRIAGE & FAMILY 1052 (2000); C.J. Patterson, *Lesbian and Gay Parents and Their Children: Summary of Research Findings*, in LESBIAN AND GAY PARENTING : A RESOURCE FOR PSYCHOLOGISTS (American Psychological Assn. 2004); E.C. Perrin & The Committee on the Psychological Aspects of Child and Family Health, *Technical Report: Coparent or Second-Parent Adoption by Same-Sex Parents*, 109 PEDIATRICS 341 (2002)).

⁴⁷ American Psychological Association, LESBIAN & GAY PARENTING 15 (2005), available at <http://www.apa.org/pi/lgbt/resources/parenting-full.pdf> (comprehensively reviewing research literature on lesbian and gay parenting and citing well over 100 pieces of scholarship in this area).

These findings comport with those of the American Anthropological Association, which, on the basis of extensive research, has taken the official position that families headed by same-sex parents are just as capable of being stable and well-adjusted as any other type of family:

The results of more than a century of anthropological research on households, kinship relationships, and families, across cultures and through time, provide no support whatsoever for the view that either civilization or viable social orders depend upon marriage as an exclusively heterosexual institution. Rather, anthropological research supports the conclusion that a vast array of family types, including families built upon same-sex partnerships, can contribute to stable and humane societies.⁴⁸

Permitting same-sex couples to marry would also alleviate the stigma suffered by their children.⁴⁹ According to a research review conducted by the American Psychoanalytic Association, “[c]hildren of same-sex couples are

⁴⁸ Trial Exhibit Nos. PX0754, PX0767 (American Anthropological Association, *Statement on Marriage and the Family* (2004)); see also JOHN BOSWELL, *SAME-SEX UNIONS IN PREMODERN EUROPE* (1995); GILBERT HERDT, *THIRD SEX, THIRD GENDER: BEYOND SEXUAL DIMORPHISM IN CULTURE AND HISTORY* (1994); JAMES NEILL, *THE ORIGINS AND ROLE OF SAME-SEX RELATIONS IN HUMAN SOCIETIES* (2009); WILL ROSCOE, *CHANGING ONES: THIRD AND FOURTH GENDERS IN NATIVE NORTH AMERICA* (2000); DAVID SCHNEIDER, *A CRITIQUE OF THE STUDY OF KINSHIP* (1984); Allan Tulchin, *Same-Sex Creating Households in Old Regime France: The Uses of the “Affrèrement,”* J. MODERN HISTORY (Sept. 2007).

⁴⁹ The general impact of stigmatization on children has been well documented. Richard Milich et al., *Effects of Stigmatizing Information on Children’s Peer Relations: Believing Is Seeing*, 21 SCHOOL PSYCHOLOGY REVIEW 400, 400-09 (1992).

accorded a stigmatized status of being ‘illegitimate.’”⁵⁰ But the same research review also concluded that “[t]o the extent that legal marriage fosters well-being in couples, it will enhance the well-being in their children who benefit most when their parents are financially secure, physically and psychologically healthy and not subjected to high levels of stress.”⁵¹

More generally, children of school age and in early to mid-adolescence have a strong desire to conform to the norms of their community, to be like other kids and not to stand out from their peers.⁵² Coming from a family that is perceived as “ordinary” or “normal” is extremely important to many children. Given the social disapproval of same-sex couples that persists in many communities, the children of such a relationship may suffer stigma and resulting distress regardless of the State’s official attitude toward their parents’ relationship, but such distress is enhanced if the State itself labels their parents’ relationship as “different” and implicitly of lesser standing.

⁵⁰ American Psychoanalytic Association, *supra* note 22.

⁵¹ *Id.* (citing Chan, *supra* note 42; C.J. Patterson, *Families of the Lesbian Baby Boom*, 4 JOURNAL OF GAY AND LESBIAN PSYCHOTHERAPY 91 (2001)).

⁵² KENNETH H. RUBIN ET AL., PEER INTERACTIONS, RELATIONSHIPS, AND GROUPS, IN HANDBOOK OF CHILD PSYCHOLOGY 641-44, 653-54, 658 (William Damon ed., vol. 3, 5th ed. 1998).

CONCLUSION

By making the institution of marriage available to opposite-sex couples only, relegating same-sex couples to the separate – and thus inherently unequal – institution of domestic partnership, the State of California enshrines the stigmatization of gay men and women. This Court should accordingly affirm the District Court’s ruling that California’s definition of marriage, as implemented by Proposition 8, is unconstitutional under the Constitution of the United States.

Dated: October 25, 2010

Respectfully submitted,

By: /s/ John D. Freed

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CERTIFICATE OF COMPLIANCE

I certify that, pursuant to Federal Rule of Appellate Procedure 32(a)(7) and Ninth Circuit Rule 29-2(c)(3), the attached brief is proportionally spaced, has a typeface of 14 points and, according to the word-count feature of Microsoft Office Word 2003, contains 6,841 words, including footnotes, but not including parts of the brief exempted by Rule 32(a)(7)(B)(iii).

Dated: October 25, 2010

By: /s/ John D. Freed
John D. Freed

APPENDIX

No. 10-16696

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

KRISTIN PERRY, et al.,
Plaintiffs-Appellees,

v.

ARNOLD SCHWARZENEGGER, et al.,
Defendants,

and

DENNIS HOLLINGSWORTH, et al.,
Defendant-Intervenors-Appellants,

Appeal from the United States District Court
for the Northern District of California, Civil Case No. 09-2292-VRW
Honorable Vaughn R. Walker

**APPENDIX OF STATEMENTS OF INTEREST OF *AMICI*
CURIAE AMERICAN ANTHROPOLOGICAL ASSOCIATION,
AMERICAN PSYCHOANALYTIC ASSOCIATION,
NATIONAL ASSOCIATION OF SOCIAL WORKERS,
NATIONAL ASSOCIATION OF SOCIAL WORKERS,
CALIFORNIA CHAPTER, AMERICAN SOCIOLOGICAL
ASSOCIATION AND AMERICAN ACADEMY OF
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STATEMENT OF INTEREST OF AMICI CURIAE

I. American Anthropological Association

The American Anthropological Association is the world's largest professional organization of anthropologists and others interested in anthropology. Its membership includes all specialties within anthropology, including (among others) cultural anthropology, linguistics, and applied anthropology. In 2004, the American Anthropological Association adopted a Statement on Marriage and the Family, which provides:

The results of more than a century of anthropological research on households, kinship relationships, and families, across cultures and through time, provide no support whatsoever for the view that either civilization or viable social orders depend upon marriage as an exclusively heterosexual institution. Rather, anthropological research supports the conclusion that a vast array of family types, including families built upon same-sex partnerships, can contribute to stable and humane societies.

II. American Psychoanalytic Association

The American Psychoanalytic Association is a national membership organization that has been the leading organization of psychoanalysts for the past 90 years. The membership of the association includes the leading psychoanalysts in the United States, many of whom are also leaders in their fields of psychiatry, psychology, and social work. There is a large volume of psychoanalytic literature concerning the psychological dimensions of same-sex sexual orientation and the

challenges faced by gay and lesbian individuals in our society. In 1997, the American Psychoanalytic Association's Board of Directors, after careful study that addressed not only the well-being of members of gay and lesbian couples, but also the well-being of their children, families, and the larger society, adopted a resolution stating that, "[b]ecause marriage is a basic human right and an individual personal choice, . . . the State should not interfere with same-gender couples who choose to marry and share fully and equally in the rights, responsibilities, and commitment of civil marriage." This statement was backed by extensive systematic research and clinical information that demonstrated the salutary effects for gay men and women, their children, and the community of the availability of marriage to same-sex couples.¹

III. National Association of Social Workers and National Association of Social Workers, California Chapter

Established in 1955, the National Association of Social Workers ("NASW") is the largest association of professional social workers in the world, with 145,000 members and chapters throughout the United States, Puerto Rico, Guam, and the Virgin Islands; the Association also has an International Chapter in Europe. The NASW, California Chapter has more than 11,000 members. With the

¹ An expanded version of the research upon which this resolution was based was published by Bertram Cohler and Robert Galatzer-Levy in *The Course of Gay and Lesbian Lives: Social and Psychoanalytic Perspectives* (2000).

purpose of developing and disseminating standards of social work practice, while strengthening and unifying the social work profession as a whole, NASW provides continuing education, enforces the *NASW Code of Ethics*, conducts research, publishes books and studies, promulgates professional standards and criteria, and develops policy statements on issues of importance to the social work profession.

NASW adopted a policy statement on gay issues in 1977, which was subsequently revised and expanded; that policy and the *NASW Code of Ethics* prohibits social workers from discriminating on the basis of sexual orientation. In 2004, NASW reaffirmed its policy supporting same-sex marriage. NASW's family policy recognizes that gay and lesbian people are a part of existing families and provide important caregiving to children and other family members. The policy further identifies discrimination against lesbian and gay parents as undermining the survival of their families. NASW and its California chapter affirm their commitment to work toward full social and legal acceptance and recognition of lesbian, gay, and bisexual people as stated in NASW's policy statement, *Lesbian, Gay, and Bisexual Issues*:

It is the position of the NASW that same-gender sexual orientation should be afforded the same respect and rights as other-gender orientation. Discrimination and prejudice directed against any group is damaging to the social, emotional, and economic well-being of the affected group and of society as a whole. NASW is committed to advancing policies and practices that will improve the status and well-being of all lesbian, gay, and

bisexual people. . . . NASW supports the adoption of local, state, federal, and international policies/legislation that ban all forms of discrimination based on sexual orientation. LGB people must be granted all rights, privileges, and responsibilities that are granted to heterosexual people, including but not limited to inheritance rights, insurance, marriage, child custody, employment, credit, and immigration.²

IV. American Academy of Pediatrics, California

The California District of the American Academy of Pediatrics (“AAP-CA”), representing the over 5,000 board-certified pediatrician members of the four California AAP regional Chapters, has a mission to attain optimal physical, mental, and social health and well being for all infants, children, adolescents and young adults living in California. The AAP-CA believes that the physical growth, development, social and mental well-being of all children are supported by allowing parents a full range of parental legal rights, such as Social Security survivor benefits, health benefits for dependent children, and legally recognized consent for education and medical decisions. In order to protect and promote the best interests of the child, the AAP-CA supports equal access for all California children to the legal, financial and emotional protections of civil marriage for their parents, without discrimination based on family structure. In light of its focus on children’s health issues, the AAP-CA lends its explicit support

² *Social Work Speaks* 218, 220 (8th ed. 2009).

only to Section III of the attached brief, entitled “Depriving Same-Sex Couples of the Ability to Marry Has Adverse Effects on Their Children.”

V. American Sociological Association

The American Sociological Association (ASA) is the major professional association for sociologists in the United States. The organization has more than 14,000 members, including most sociologists holding doctorate degrees from accredited universities. ASA is a non-profit association dedicated to advancing sociology as a scientific discipline and profession serving the public good. In 2004, the ASA membership voted to adopt an official statement opposing a federal constitutional amendment banning same-sex marriage, based on its finding that such an amendment intentionally discriminates against lesbians and gay men, as well as their children and other dependents, by denying access to the protections, benefits, and responsibilities extended automatically to married couples. The ASA's official statement recognized that the justifications offered for such an amendment were based on prejudice rather than empirical research; the statement relies on a body of sociological research that has repeatedly shown that systems of inequality are detrimental to the public good.

Dated: October 25, 2010

Respectfully submitted,

By: /s/ John D. Freed

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